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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,738	03/30/2004	Gabriel T. Hughes	P03843	5117

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EXAMINER

SUHOL, DMITRY

ART UNIT PAPER NUMBER

3725

DATE MAILED: 10/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/813,738

Applicant(s)

HUGHES, GABRIEL T.

Examiner

Dmitry Suhol

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 6-8, 9-11, 12, 14-18, 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Kesler '373. Kesler discloses a dally training system containing all of the claimed elements including, providing a line means (lines 154, 158 and 314) as required by claims 1, 7, 13-14 and 26, a tension means (spring biased reel 16) as required by claims 1, 7, 14, 19-20 and 26, a line means comprising (connected to as required by claim 13) at least one dally rope (158, 314) structured and arranged to permit dallying around at least one saddle horn as required by claims 1, 7, 14 and 30, where it is considered that as broadly claimed the rope (158, 314) possesses the needed structure and arrangement to be used in a dally operation, especially since it may be unhooked from clip 160. A first connection means, as required by claims 2, 8 and 16, is shown as clip 160 in figure 2. A saddle horn means, as required by claims 6, 11-12 and 14 is shown in figure 1 as the saddle horn of saddle 310. At least one second connector, as required by claims 9-10 and 17-18, is inherent in the Kesler device since without such a connector reel 16 would not be able to stay in position and function as intended. The step of applying a tension force, as required by claim 13, is inherent with

the reel (16) of Kesler due to the spring bias described in col. 8, lines 15-25. The step of connecting the tensioning force to a substantially fixed object, as required by claim 13, is shown in figure 2 and described in col. 8, lines 15-25. The step of dallying, as required by claim 13, is described in col. 3, lines 36-51. At least one dally rope comprising a free end which can be coiled in at least one hand of the dallyer, as required by claim 15, is read onto the loose end 314 prior to being looped around a calf.

Claims 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Rudolph '960. Rudolph discloses a dally training system containing all of the claimed elements including, at least one line (lines 10 and 18) as required by claim 14, at least one tensioner (reel 16) as required by claim 14, at least one saddle horn, as required by claim 14 is shown in figure 1 as the saddle horn 12. A first connector, as required by claim 16, is shown as clip 20 in figure 1. At least one line comprising at least one dally rope (10) as required by claim 15 is shown in figure 1.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kesler '373 in view of Fontaine '644. Kesler fails to explicitly teach a type of connection

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means involved in securing it to a substantially fixed object 50 as required by claims 3-4. However, Fontaine discloses a reel assembly usable with animals (like the assembly 16 of Kesler) which teaches that it is known to provide a connecting means (elements 12, 13, 14, 15, 16) in order to provide a releasable and secure connection between the reel device and another object. Therefore it would have been obvious to one having ordinary skill in the art, at the time of the applicants invention, to have provided the reel of Kesler with a connection means of Fontaine for the purpose of securely and releasably attaching the Kesler reel to another object.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rhoades '546. Rhoades discloses a dally practice device and method containing most of the claimed limitations including, providing at least one line (26), providing at least one reel (14 and 16) structured and arranged to apply at least one tensioning force (force is applied to the reel through weight 18), connecting at least one reel to a substantially fixed object (6 and 12), dallying using a dally rope (figure 4 and col. 2, lines 12-18).

Rhoades fails to teach the use of a line connected to a dally rope, as required by claim 13, however since applicants clearly state at page 15, lines 4-6 that the combination of the line and rope may be substituted for with just the rope, it is the position of the examiner that such construction is simply a design choice and the equivalent single rope would function just as well as a line and rope combination.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kesler '373 in view of Marshall '052. Kesler fails to explicitly teach at least one clutch system to allow the user to control the tension in the at least one line as required by claim 21. However, Marshall discloses a reel assembly usable with animals (like the assembly 16 of Kesler) which teaches that it is known to provide a clutch system which allows for adjustment of desired tension produced by the spring loaded reel (clutch system of shaft 8, member 18, sleeve 13 and spring 15 described at cols. 2-3, lines 56+ and 1-16, respectively). Therefore it would have been obvious to include a clutch system with the reel device of Kesler for the purpose of allowing the user to adjust the device to the desired tension.

Claims 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kesler '373 in view of Bacque '989. Kesler fails to explicitly teach at least one line having at least one safety release as required by claim 22, where the safety release is at least one hook and loop material as required by claim 23. However, Bacque discloses a rope (like the rope used by Kesler) which teaches that it is advantageous to provide such ropes with a safety release comprising a hook and loop material (col. 2, lines 25-45). Therefore it would have been obvious to incorporate hook and loop material in with the rope of Kesler for the purpose of providing a rope with a safety mechanism which disengages different rope portions when a predetermined tension level is reached.

Claims 22, 24-26 and 32-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kesler '373 in view of Knox '533. Kesler fails to explicitly teach at least one line having at least one safety release as required by claims 22 and 33, at least one anti-kinking element as required by claims 24 and 26, where the anti-kinking element comprises at least one swivel as required by claims 25 and 32. However, Knox discloses a rope (like the rope used by Kesler) which teaches that it is advantageous to provide such ropes with a safety release and anti-kinking element comprising a swivel (figure 11, col. 2, lines 33-38 and col. 3, lines 62+). Therefore it would have been obvious to include the structure of Knox in the rope of Kesler for the purpose of preventing twisting of the rope and allowing sections of the rope to come apart if the stress of the rope exceeds a predetermined amount.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kesler '373 in view of Croce et al '283. Kesler fails to teach a reel comprising at least one asymmetric protrusion adapted to provide irregular retraction as required by claim 19, eccentric portion adapted to provide irregular retraction of the line as required by claim 27, where the eccentric portion comprises at least one protrusion as required by claim 28, where at least one protrusion comprises exactly one protrusion as required by claim 29. However, Croce discloses a reel assembly usable with animals (like the assembly 16 of Kesler) which teaches that it is known to provide such an assembly with an eccentric portion comprising at least one protrusion, also considered to be an asymmetric protrusion (teeth 29 and col. 4, lines 55-58) for the purpose providing more

control of the reel to the user by allowing for a variety of settings including free movement, retract and lock (where it is considered that the lock settings encompasses "irregular retraction" since the line would not be continuously retracted by the reel). Therefore it would have been obvious to provide the reel of Kesler with the structure of Croce for the purpose of providing more control of the reel to the user by allowing for a variety of settings.

Claims 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kesler '373 and Knox '533, as stated above, and further in view of Croce et al '283. Kesler, as modified by Knox, fails to teach a reel comprising an eccentric portion adapted to provide irregular retraction of the line as required by claim 27, where the eccentric portion comprises at least one protrusion as required by claim 28, where at least one protrusion comprises exactly one protrusion as required by claim 29. However, Croce discloses a reel assembly usable with animals (like the assembly 16 of Kesler) which teaches that it is known to provide such an assembly with an eccentric portion comprising at least one protrusion, also considered to be an asymmetric protrusion (teeth 29 and col. 4, lines 55-58) for the purpose providing more control of the reel to the user by allowing for a variety of settings including free movement, retract and lock (where it is considered that the lock settings encompasses "irregular retraction" since the line would not be continuously retracted by the reel). Therefore it would have been obvious to provide the reel of Kesler with the structure of Croce for the purpose of providing more control of the reel to the user by allowing for a variety of settings.

Claims 30-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kesler '373, Knox '533 and Croce et al '283, as stated above, and further in view of Fontaine '644. Kesler, as modified by Knox and Croce, fails to teach a reel including a casing and a stopper which prevents the line from being pulled back into the housing as required by claims 30 and 31. However, Fontaine discloses a reel assembly usable with animals (like the assembly 16 of Kesler) which teaches that it is known to provide such reels with a casing (1) and associated stopper (elements 5 and 6). Therefore it would have been obvious to incorporate a housing and casing and stopping member of Fontaine for the purpose of safety, durability and stopping the line from retracting at the desired point.

Response to Arguments

Applicant's arguments filed July 27th, 2005 have been fully considered but they are not persuasive. Applicants first argue that the device of Kesler is not a dally training system and cannot function as one. In response the examiner points out that all of the limitations as claimed by the applicants are found in Kesler and that there is absolutely no reason that that Keslers rope 314 cannot be used for dallying, as claimed by the applicants.

Regarding applicants assertion that Kesler does not teach equivalents to applicants means plus function language, the examiner disagrees and points out that Kesler has a reel (16) attached to a stationary object with a line 154 and a connector

160 which attaches a rope 158 and 314, therefore it is the examiners position that applicants structure is clearly shown in Kesler and the rope of Kesler can be easily used for dallying.

Regarding applicants assertion that the device of Rudolph cannot be used for dallying, it is again the examiners position that the device of Rudolph may be easily used for dallying. In fact, Rudolph clearly shows in figure 1 that the end of the rope may be attached to the saddle horn.

Applicants further argue that it would not be obvious to combine Kesler and Fontaine since they are non-analogous. In response the examiner points out that it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, both Kesler and Fontaine devices are reel type devices used with animals with the Kesler device being secured to an object (figure 2) but Kesler is silent as to the means of securement, while Fontaine clearly shows that it is beneficial to use his securement means in order to provide a releasable and secure connection between the reel and another object. The motivation as suggested by the examiner can be found in the Fontaine reference in cols. 1 and 2, lines 26-27 and 9-13, respectively.

Applicants provide the same arguments for the combination of Kesler and Marshall references (i.e. non analogous art). In response the examiner points out, as stated above, Kesler and Marshall devices are reel type devices used with animals,

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while the device of Marshall further improves on the device of Kesler by providing for a structure which allows for the tension of the device to be adjusted depending on the strength of the animal it is being used with (see Marshall, col. 1, lines 28-32) therefore there is clear motivation to combine the references as stated above.

Regarding the combination of Kesler and Bacque, the Kesler reference clearly teaches a rope for use in cowboy type sports (col. 8, lines 35-37), while Bacque adds the teaching that it is known to provide such ropes with a hook and loop type connection for the purposes of safety (clear motivation found throughout the disclosure of Bacque and stated above in the rejection).

Regarding the combination of Kesler and Knox, the same reasoning is applied, as stated above, where Knox clearly provides the motivation to combine the references since his device improves on the standard rope by providing an anti-kinking element and safety mechanism (see Knox, col. 3, lines 62+).

Regarding the combination of Kesler and Croce, the same reasoning is applied, as stated above, where Croce clearly provides the motivation to combine the references by providing a device which allows for greater control through the use of his settings facilitated by his structural features. With respect to the argument that the "irregular retraction" as disclosed by the applicants is not the same as the irregular retraction of Croce, the examiner disagrees and points out that at page 15 applicants appear to define that irregular retraction is "...the speed with which slack is taken up and/or the tension in line 112 varies as the line is coiled around the reel...". In which case it is the

position of the examiner that the reel structure of Croce will produce the same results when different settings are selected.

Regarding applicants request for an interview, the examiner may be reached at the number below to schedule an interview at a mutually convenient time.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dmitry Suhol whose telephone number is 571-272-4430. The examiner can normally be reached on Mon - Friday 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on (571) 272-4419. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'D. Suhol', with a stylized flourish at the end.

Dmitry Suhol

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